

§ 11.2

(9) The Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, or the Military Personnel and Civilian Employees Claims Act of 1964, 31 U.S.C. 3721; or

(10) Discrimination complaints prosecutable under the nondiscrimination regulations at 7 CFR parts 15, 15a, 15b, and 15e.

Record review means an appeal considered by the Hearing Officer in which the Hearing Officer's determination is based on the agency record and other information submitted by the appellant and the agency, including information submitted by affidavit or declaration.

Secretary means the Secretary of Agriculture.

§ 11.2 General statement.

(a) This part sets forth procedures for proceedings before the National Appeals Division within the Department. The Division is an organization within the Department, subject to the general supervision of and policy direction by the Secretary, which is independent from all other agencies and offices of the Department, including Department officials at the state and local level. The Director of the Division reports directly to the Secretary of Agriculture. The authority of the Hearing Officers and the Director of the Division, and the administrative appeal procedures which must be followed by program participants who desire to appeal an adverse decision and by the agency which issued the adverse decision, are included in this part.

(b) Pursuant to section 212(e) of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Public Law 103-354 (the Act), 7 U.S.C. 6912(e), program participants shall seek review of an adverse decision before a Hearing Officer of the Division, and may seek further review by the Director, under the provisions of this part prior to seeking judicial review.

§ 11.3 Applicability.

(a) *Subject matter.* The regulations contained in this part are applicable to adverse decisions made by an agency, including, for example, those with respect to:

7 CFR Subtitle A (1-1-97 Edition)

(1) Denial of participation in, or receipt of benefits under, any program of an agency;

(2) Compliance with program requirements;

(3) The making or amount of payments or other program benefits to a participant in any program of an agency; and

(4) A determination that a parcel of land is a wetland or highly erodible land.

(b) *Limitation.* The procedures contained in this part may not be used to seek review of statutes or USDA regulations issued under Federal law.

§ 11.4 Inapplicability of other laws and regulations.

The provisions of the Administrative Procedure Act generally applicable to agency adjudications (5 U.S.C. 554, 555, 556, 557, & 3105) are not applicable to proceedings under this part. The Equal Access to Justice Act, as amended, 5 U.S.C. 504, does not apply to these proceedings. The Federal Rules of Evidence, 28 U.S.C. App., shall not apply to these proceedings.

§ 11.5 Informal review of adverse decisions.

(a) *Required informal review of FSA adverse decisions.* A participant must seek an informal review of an adverse decision issued at the field service office level by an officer or employee of FSA, or by any employee of a county or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act, 16 U.S.C. 590h(b)(5), before NAD will accept an appeal of an FSA adverse decision. Such informal review shall be done by the county or area committee with responsibility for the adverse decision at issue. The procedures for requesting such an informal review before FSA are found in 7 CFR part 780. After receiving a decision upon review by a county or area committee, a participant may seek further informal review by the State FSA committee or may appeal directly to NAD under § 11.6(b).

(b) *Optional informal review.* With respect to adverse decisions issued at the State office level of FSA and adverse